

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No. SDWA-08-2006-0047

In the Matter of:)	
)	FIRST AMENDED COMPLAINT AND
Summer Night Oil Company, LLC)	NOTICE OF OPPORTUNITY FOR
a Colorado limited liability company)	HEARING
)	
Respondent.)	

INTRODUCTION

1. This civil administrative enforcement action is authorized by Congress in section 1423(c)(2) of the Public Health Service Act, also known as the Safe Drinking Water Act (SDWA or the Act). 42 U.S.C. § 300h-2(c)(2). The Environmental Protection Agency (EPA) Underground Injection Control Program regulations authorized by the statute are set out in 40 C.F.R. parts 124, 144, 146, 147, and 148. Violations of the statute, permits or EPA regulations constitute violations of the Act. The rules for this proceeding are the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits (“Rules of Practice”),” 40 C.F.R. part 22, a copy of which is enclosed. The procedures provided in 40 C.F.R. part 22, subpart I will apply to these proceedings, and the Regional Judicial Officer (“RJO”) will preside. 40 C.F.R. sec. 22.50(a)(2).

2. Since Respondent has not filed an answer, EPA files this first amended complaint as a matter of right. 40 C.F. R. sec. 22.14(c).

3. The undersigned EPA official has been properly delegated the authority to issue this action.

4. EPA alleges that Respondent has violated the Act, permit, and/or regulations and proposes the assessment of a civil penalty and an expeditious compliance schedule, as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

5. Respondent has the right to a public hearing before the RJO to disagree with (1) any fact stated (alleged) by EPA in the complaint, (2) the grounds for any legal defense, or (3) the appropriateness of the relief sought.

6. To disagree with the complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk , 999 18th Street; Suite 200 (8RC); Denver, Colorado 80202 (and serve a copy on the attorney listed below) within 30 days of receiving this complaint. The answer must clearly admit, deny, or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in the answer. **FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE RESPONDENT’S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND MAY RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY AND COMPLIANCE PROPOSED IN THE COMPLAINT, OR UP TO THE MAXIMUM AUTHORIZED BY THE ACT.**

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Thomas E. Sitz, Enforcement Attorney, at 1-800-227-8917; extension 6918 or 303-312-6918 or the address below. **Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.**

GENERAL ALLEGATIONS

The following general allegations apply to all times relevant to this action, and to each count of this complaint:

8. Respondent, Summer Night Oil Company, LLC, is a limited liability company formed in Colorado on or about September 21, 2000. Respondent’s principal office address is 1645 Court Place, Suite 100, Denver, Colorado 80202.

9. Respondent is a “person” within the meaning of Section 1401 (12) of the Act, 42 U.S.C. sec. 300f(12).

10. Pursuant to section 1422 of the Act, 42 U.S.C. § 300h-1, and 40 C.F.R. part 147 subpart BB, section 147.1351, EPA administers the Underground Injection Control (UIC) program for Class II wells in Indian Country within the State of Montana. The effective date of the program is June 25, 1984. The program requirements are located at 40 C.F.R. parts 124, 144, 146, 147, and 148.

11. Class II salt water disposal wells under the jurisdiction of the EPA must be authorized to operate under an EPA-issued permit.

12. The UIC well Anderson # 27-1 (“the well”) is a Class II salt water disposal well.

13. The well is located in Township 33 North, Range 48 East, in the NW quarter of the NW quarter of Section 27, 660 feet from the North line, 660 feet from the East line, in the Nielson Coulee Oil Field in Daniels County, Montana, within the exterior boundary of the Fort Peck Indian Reservation.

14. The well penetrates underground sources of drinking water (USDWs), as defined in 40 C.F.R. sec. 144.3, including but not limited to the Fort Union, Fox Hills/Hell Creek, and Judith River Formation aquifers.

15. On May 25, 2004, EPA issued EPA Permit No. MT20956-06196 (“permit”) to Respondent for salt water disposal in the well.

16. The permit authorized Respondent to construct and operate the well, subject to specified terms and conditions.

17. By letter dated March 15, 2005, EPA authorized Respondent to inject into the well and made minor modifications to the permit.

18. By its March 15, 2005 letter transmitting authorization to inject and a permit modification, EPA provided copies of EPA’s guidances for conducting step rate testing, temperature logs, and radioactive tracer surveys (“RATS”).

19. Respondent commenced salt water disposal injection into the well on or about March 15, 2005.

COUNT 1

20. Part II (B) of the permit requires Respondent to demonstrate (and maintain) mechanical integrity (“MI”) of the well in accordance with specified methods and schedules. In particular, Appendix B of the permit, as modified, requires Respondent to conduct either a temperature log or a RATS to demonstrate Part II (External) MI within three (3) months of commencing injection (by June 15, 2005).

21. Part II (A)(4) requires Respondent to submit well logs and tests to EPA with 60 days of completion of the logging or testing activity and to include a report describing the methods used during logging or testing and an interpretation of the test or log results.

22. By hand delivery on June 13, 2006, EPA received a temperature log for the well conducted on June 10, 2006.

23. This temperature log was conducted in a manner that did not follow EPA's guidance, and thus fails to demonstrate Part II (External) MI. For example, the temperature log did not contain a minimum of four decay curves, as specified in EPA's January 12, 1999 "Temperature Logging for Mechanical Integrity" guidance. In addition, the log failed to include the required report describing the method and an interpretation of the log results.

24. To date, Respondent has failed to demonstrate Part II (External) MI, a continuing violation of Parts II(A) and II(B) of the permit, beginning on June 15, 2005. This constitutes at least 380 days of violation.

COUNT 2

25. Part II (A)(4) and Appendix B, as modified, requires Respondent to conduct a step rate test for the well within three (3) months of commencing injection (by June 15, 2005).

26. Part II (A)(4) also requires Respondent to submit well logs and tests to EPA with 60 days of completion of the logging or testing activity and to include a report describing the methods used during logging or testing and an interpretation of the test or log results.

27. To date, EPA has not received a step rate test for the well, a continuing violation of Part II (A)(4) of the permit, beginning on June 15, 2005. This constitutes at least 380 days of violation.

COUNT 3

28. Part II (C)(3) and Appendix C of the permit set the Maximum Allowable Injection Pressure ("MAIP") for the well at 935 psi, as measured at the surface.

29. By letter dated December 5, 2005, Respondent notified EPA that on November 12, 2005 the well was used for injection and the circular chart recorder denoted injection pressure in excess of 2000 psi.

30. On November 12, 2005 the well injection pressure exceeded the MAIP set in the Part II (C)(3) and Appendix C of the permit, a one day violation.

COUNT 4

31. Part II (D)(4) and Appendix D of the permit requires Respondent to submit an Annual Report by February 15th each year following the reporting year, summarizing the monitoring done for the well, including the weekly observations of injection pressure, annulus

pressure, injection rate, and a chemical analysis of injected fluids, including total dissolved solids, specific gravity, specific conductivity, and pH.

32. By letter dated April 10, 2006, Respondent submitted a 2005 Annual Report for the well, which was due February 15, 2006.

33. Moreover, Respondent's 2005 Annual Report was not complete. Respondent's 2005 Annual Report lacks chemical analysis for total dissolved solids, specific gravity, special conductivity, and pH; and the report lacks injection pressure and injection volumes for November and December 2005.

34. Respondent's late and incomplete 2005 Annual Report constitutes a continuing violation of Part II (D)(4) and Appendix D of the permit, beginning February 15, 2006. This constitutes at least 135 days of violation.

RELIEF SOUGHT

35. The Act authorizes the assessment of a administrative civil penalty of up to \$6,500 per day of violation, up to a maximum of \$157,500, and the issuance of an order requiring compliance with the UIC requirements, 42 U.S.C. sec. 300h-2(c)(2), as amended by the Civil Monetary Penalty Inflation Adjustment Rule, 69 FR 7121 (February 13, 2004). See also 40 C.F.R. sec. 22.1(a)(9). The Act requires EPA to take into account the following factors in assessing a civil penalty: the seriousness of the violation, the economic benefit resulting from the violation, Respondent's prior compliance history of such violation, any good-faith efforts to comply, the economic impact on Respondent, and other factors that justice may require. 42 U.S.C. sec. 300h-2(c)(4)(B).

36. In light of the statutory factors and the specific facts of this case, EPA requests that the RJO assess a penalty of **\$15,900**, plus additional penalties for each of the continuing violations from July 1, 2006 until those violations cease, and order Respondent to comply expeditiously with each of the permit requirements cited in Counts 1-4. A brief explanation of the proposed penalty follows:

Seriousness of violations

An injection well lacking mechanical integrity has the potential to serve as a vertical conduit for injected or connate fluids, which could lead to contamination of an underground source of drinking water. A step rate test is necessary to measure the pressure at which the host injection zone rock fractures, so as to establish permit limits to assure this pressure is not exceeded. It is important that EPA use reliable information to assure an accurate permit pressure limit. Exceeding the permitted maximum injection pressure by more than twofold makes it very possible that such injection actually caused

fractures to open in the injection zone which may have allowed injected fluids to migrate into underground sources of drinking water. Failing to timely and completely report monitoring information leaves EPA without key information to assess the well's potential impact on underground sources of drinking water.

Economic benefit resulting from the violations

Respondent has enjoyed an economic benefit by avoiding or delaying the expenditures associated with conducting the step rate test, the external mechanical integrity demonstration, and reporting. EPA estimates a total economic benefit of \$4,067 (through June 30, 2006) associated with such avoided or delayed costs.

History of violations

Respondent has no prior history of UIC violations. EPA made no upward adjustments to the proposed penalty based on this actor.

Good-faith efforts to comply

EPA made no adjustments to the proposed penalty due to this factor, but will consider any information Respondent may present regarding this factor.

Economic impact on the violator

EPA did not reduce the proposed penalty due to this factor, but will consider any new information Respondent may present regarding this factor.

Other matters as justice may require

EPA made no adjustments to the proposed penalty due to this factor, but will consider any information Respondent may present regarding this factor.

37. The RJO is not bound by EPA's penalty policy or the penalty proposed by Complainant, and may assess a penalty above the proposed amount, up to the maximum amount authorized in the statute.

38. In accordance with 40 C.F.R. sec. 22.45, EPA will provide public notice of this action.

39. To discuss settlement or ask any questions you may have about this case or process, please contact Thomas E. Sitz, Enforcement Attorney, at 303-312-6918, or the address below:

United States Environmental Protection Agency, Region 8
Office of Enforcement, Compliance &
Environmental Justice
999 18th Street, Suite 200 (ENF-L)
Denver, CO 80202

Date: 07/14/2006

By: SIGNED
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance &
Environmental Justice

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON JULY 14, 2006.